

226827

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Docket No. AB-6 (Sub-No. 470X)

BNSF RAILWAY COMPANY
- DISCONTINUANCE OF TRACKAGE RIGHTS EXEMPTION -
IN PEORIA AND TAZEWELL COUNTIES, ILLINOIS

NOTICE OF TAZEWELL & PEORIA RAILROAD, INC.
TO PARTICIPATE AND
REQUEST TO ACCEPT LATE-FILED REPLY

ERIC M. HOCKY
THORP REED & ARMSTRONG, LLP
One Commerce Square
2005 Market Street, Suite 1000
Philadelphia, PA 19103
(215) 640-8500
ehocky@thorpreed.com

Dated: April 16, 2010

Attorneys for
Tazewell & Peoria Railway, Inc.

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Docket No. AB-6 (Sub-No. 470X)

**BNSF RAILWAY COMPANY
- DISCONTINUANCE OF TRackage RIGHTS EXEMPTION -
IN PEORIA AND TAZEWell COUNTIES, ILLINOIS**

**NOTICE OF TAZEWell & PEORIA RAILROAD, INC.
TO PARTICIPATE AND
REQUEST TO ACCEPT LATE-FILED REPLY**

This discontinuance exemption proceeding was commenced by BNSF Railway Company ("BNSF") with the filing of a petition for exemption on February 16, 2010. Toledo, Peoria & Western Railroad Co. ("TP&W") filed a reply in opposition on March 29, 2010. Under 49 CFR 1152.25 any interested person may become a party to a discontinuance proceeding by filing written comments with the Board. Because the trackage rights BNSF seeks to discontinue are over a line of railroad currently leased to Tazewell & Peoria Railroad, Inc. ("TZPR"), TZPR is potentially affected by the proceeding and wishes to become a party to the proceeding and to be heard.

TZPR supports BNSF's request for a discontinuance exemption as discussed more fully below. TZPR could not have anticipated that TP&W would oppose the formal discontinuance of these trackage rights since the underlying agreement for such trackage rights was terminated almost 30 years ago. Accordingly TZPR did not file a reply within the time stated in the Notice of Exemption issued by the Board served on March 8, 2010. In light of TP&W's opposition, TZPR believes that it now needs to formally participate in this proceeding, and hereby provides notice of its intent to do so. The Board's Notice of Exemption indicates that it will issue its final decision by June 4, 2010. Accordingly, allowing TZPR to file a reply to the filings on record

within 20 days after TP&W filed its reply will not delay the consideration of BNSF's petition for exemption, or prejudice any party.

Reply

The background of this transaction and the underlying trackage rights has been set out by BNSF and by TP&W. A copy of the trackage rights agreement dated April 30, 1971 among Peoria and Pekin Union Railway Company ("PPU"), Toledo, Peoria & Western Railroad Company (predecessor to TP&W), and Burlington Northern, Inc. (predecessor to BNSF) is attached hereto for the Board's reference. As noted in previous filings by BNSF and TP&W, TZPR is now the lessee and operator of the lines of PPU.

It is critical to note that since June 1, 1982, the trackage rights have not been used. As noted by BNSF, the agreement was terminated by PPU in accordance with the terms of Section 9 of the trackage rights agreement. That section also required BNSF to file with the ICC to discontinue the trackage rights. Although it appears that no filing was made at that time, BNSF's petition is consistent with the requirements of the terminated agreement. Currently there is no effective agreement to cover the trackage rights BNSF seeks to discontinue.¹

Since 1982, after termination of the trackage rights agreement, BNSF has been delivering mixed TP&W/PPU (now TZPR) traffic to TZPR. The traffic is then sorted by TZPR - TZPR sets out the traffic destined to TP&W, makes up a train, and delivers it to TP&W. When TP&W brings back cars to be interchanged to BNSF, TZPR combines the traffic with its own traffic destined to BNSF, for pick up by BNSF. During 2009, TZPR interchanged just under 2700 cars

¹ It is not clear that any of the current railroads involved would have any rights under the terminated agreement in any event. Section 12 prohibits the assignment of the agreement and the rights without the consent of PPU. TP&W has not provided any evidence that PPU agreed to the assignment of rights from the original parties to the current TP&W or BNSF.

of traffic with BNSF for customers served by TZPR, in addition to the BNSF-TP&W interchange traffic.

/ Under Section 10502, the Board must grant an exemption when it finds that the application of in whole or in part of a portion of the ICC Termination Act –

- (1) is not necessary to carry out the transportation policy of section 10101 of this title; and
- (2) either –
 - (A) the transaction is of limited scope; or
 - (B) the application in whole or in part of the provision is not needed to protect shippers from the abuse of market power.

49 USC §10502(a).

TP&W argues that additionally with *abandonments*, the railroad must also demonstrate either that there is no longer any need for service on the line or that the line in question has become a burden on interstate commerce. TP&W Reply at 5, citing *The Indiana Railroad Company – Abandonment Exemption – In Marin and Lawrence Counties, IN*, STB Docket No. AB-295 (Sub-No. 7X) (served March 26, 2010). Although this additional requirement has not consistently been required in all abandonment cases (*see Minnesota Northern Railroad, Inc. – Abandonment Exemption – In Roseau County, MN*, STB Docket No. AB-497 (Sub-No. 5X) (served January 22, 2010), slip op. at 2), it definitely has not been applied in recent *discontinuance* cases. *See CSX Transportation, Inc. – Discontinuance of Service Exemption – In Clark, Floyd, Lawrence, Orange and Washington Counties, IN*, STB Docket No. AB-55 (Sub-No. 698X) (served April 7, 2010), slip op. at 4; *Bi-State Development Agency of the Missouri-Illinois Metropolitan District – Discontinuance of service Exemption – in the City of St. Louis, MO*, STB Docket No. Ab-331 (Sub-No. 1X) (served February 19, 2010), slip op. at 3. Further,

where the discontinuance is only of trackage rights (as is the case here), where after discontinuance there will still be service available over the line, and where no party is arguing that the line should or would be removed from service, the additional requirement is certainly not relevant. Since TP&W has not shown that BNSF's proposed discontinuance fails to satisfy the standards for an exemption under Section 10502, the exemption should be granted.

TP&W has not demonstrated how or why rejecting the exemption and requiring an application is necessary to carry out the transportation policy of 49 USC 10901. Such a requirement would add unnecessary cost and time, and would not provide any additional information for the Board's consideration. This is a straightforward situation where BNSF is seeking discontinuance of three miles of overhead trackage rights, as required as a result of the termination of the underlying trackage rights agreement. As all parties acknowledge, the trackage rights have not been used by BNSF (or its predecessors) since the agreement was terminated as of May 31, 1982. Since that time, the traffic has been handled efficiently through PPU, and now TZPR as the lessee of PPU's lines, without any adverse effect on, or complaints by, shippers.

The discontinuance is clearly limited in scope. The trackage rights in this case were overhead only, so there are no local customers that would lose service. Further, since BNSF has not used the trackage rights since 1982, there will be no change in the service to shippers, and shippers will receive the same service as has been provided for the past 28 years.

Additionally, shippers do not need to be protected from an abuse of market power from the discontinuance of these trackage rights. Although TP&W asserts that shippers under the current arrangements get slower service because of the current arrangements, clearly shippers have been getting the same service for many years, and significantly, none of them have


complained in this proceeding. In any circumstance, the traffic interchanged from BNSF to TP&W and TZPR will still need to be separated by one of the carriers meaning that there will be no cost savings to be passed along to shippers by changing how the traffic is handled. Further, as explained by BNSF, it is not clear that shippers would get any faster service if the trackage rights were used. If TZPR were not handling the combined traffic, then BNSF would need to perform the blocking service now performed by TZPR before traffic could be moved to TZPR and TP&W. Alternatively, all of the traffic could move from BNSF to TP&W where it would then need to be blocked and the TZPR traffic moved back to TZPR. In this scenario, TP&W's traffic might be received more quickly by TP&W, but it is not clear that its shippers would receive quicker service, and TZPR's traffic and customers would receive slower service.²

Finally, if the discontinuance exemption were denied, the parties (TZPR and BNSF) would need to enter into a new trackage rights agreement since there is no currently effective agreement. The parties would need to either agree on the appropriate current level of trackage rights fee, or if they were unable to do so, or the Board would be asked to establish the fee. There is no evidence to suggest that the fee would be substantially less than the intermediate switch fee currently being charged.

² TZPR interchanged just under 2700 cars with BNSF in 2009, almost the exact same amount as TP&W did.

For all of these reasons it is clear that BNSF's petition for an exemption to discontinue the trackage rights should be granted.

Respectfully submitted,



ERIC M. HOCKY
THORP REED & ARMSTRONG, LLP
One Commerce Square
2005 Market Street, Suite 1000
Philadelphia, PA 19103
(215) 640-8500
ehocky@thorpreed.com

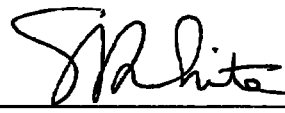
Dated: April 16, 2010

Attorneys for
Tazewell & Peoria Railway, Inc.

VERIFICATION

I, Spencer D. White, President of Tazewell & Peoria Railroad, Inc., verify under penalty of perjury that statements contained in the foregoing document are true and correct to the best of my knowledge and belief. Further, I certify that I am qualified and authorized to file this Verification.

Executed on April 16, 2010.




Spencer D. White

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of April, 2009, I served a copy of the foregoing by email on the following:

Karl Morell
Of Counsel
Ball Janik LLP
1455 F street, NW
Suite 225
Washington DC 20005
kmorell@dc.bjllp.com

Louis E. Gitomer
Melanie B. Yasbin
Law Offices of Louis E. Gitomer
600 Baltimore Avenue
Suite 304
Towson, MD 21204
lou_gitomer@verizon.net



Eric M Hocky

BURLINGTON NORTHERN INC. *Copy*

IN-293

Peoria 9-1

THIS AGREEMENT Made this 30th day of April, 1971, by and between the PEORIA AND PEKIN UNION RAILWAY COMPANY, hereinafter referred to as the "UNION COMPANY", the TOLEDO, PEORIA & WESTERN RAILROAD COMPANY, hereinafter referred to as the "TP&W RAILROAD *Santa Fe*" COMPANY," and the BURLINGTON NORTHERN, INC., hereinafter referred to as the "BURLINGTON."

WITNESSETH:

WHEREAS, the TP&W Railroad Company now owns, maintains, and operates a railroad system within and in the vicinity of East Peoria, Illinois, for the purpose of handling road haul trains, interchanging cars to and from certain road haul carriers and serving various industries in such areas; and

WHEREAS, TP&W Railroad Company's main line bridge over the Illinois River between Peoria and East Peoria has been damaged to the point where it is not feasibly economic to repair it; and

WHEREAS, Union Company owns and operates a bridge and connecting facilities capable of handling TP&W's through train movement over the Illinois River as well as its direct connections with the Burlington.

WHEREAS, TP&W Railroad Company and the Burlington now desire to maintain direct interchange in Peoria from the Burlington to the TP&W Railroad Company upon and over that portion of the Union Company's track as shown by a red line extending from

point A to point D, marked Exhibit A attached hereto and made a part hereof, for the purpose of making interchange deliveries in East Peoria, Illinois, from the Burlington to the TP&W Railroad Company; and

WHEREAS, the Union Company is willing to allow interchange deliveries to the TP&W Railroad Company upon and subject to the terms and conditions hereinafter set forth:

NOW, THEREFORE, In Consideration of the premises and the mutual and dependent covenants hereinafter set forth, the parties hereto agree, as follows:

1. PUBLIC AUTHORITY APPROVAL:

The parties, or anyone, as may be appropriate, shall make application to the Interstate Commerce Commission and any other public body for any necessary authority to carry out the transaction described. This agreement shall become operative and effective as of the date of execution of this contract under Emergency ORDER No. 1046, issued by the Interstate Commerce Commission, service date July 7, 1970, effective 12:01 a. m. July 8, 1970, pending approval of the Interstate Commerce Commission. If the Interstate Commerce Commission does not approve the transaction here described, the parties hereto will be bound by the terms of this agreement during the interim period.

2. TRackage RIGHTS:

(a) Union Company hereby grants unto the Burlington the right to operate its engines, cars and trains over that portion

of the Union Company's track as shown by a red line between points A and D, a distance of approximately 3.00 miles, which tracks are for convenience hereinafter referred to as the joint tracks.

(b) The Union Company reserves the right at any and all times to admit and to continue to admit other railroad companies to use the joint tracks as it may see fit, and the Burlington's qualified use thereof shall be joint and in common with the Union Company and such other railroad companies, their respective successors and assigns.

(c) The Burlington shall not have the right under the foregoing grant to serve industries now located or which in the future may be located adjacent to or connected with the joint track. The Burlington's use of the joint tracks shall be only for the purpose of bridging its interchange deliveries of trains, engines and cars to the yard of the TFSW Railroad Company in East Peoria, Illinois, from Point A to Point D.

3. OPERATION AND MAINTENANCE OF THE JOINT TRACKS AND FACILITIES:

(a) The operation, maintenance, repair and renewal of said joint tracks and facilities shall be by and under the exclusive direction and control of the Union Company. The Union Company shall be bound to use only reasonable and customary care, skill, and diligence in the operation, maintenance, repair and renewal of said joint tracks, and anything herein to the contrary notwithstanding, the Burlington shall not, by reason of any defect in said

joint tracks, or by reason of the failure or neglect of the Union Company to repair such defect, have or make against the Union Company any cause of action, claim or demand, for any loss, damage, destruction, injury or death whatsoever, arising from such defect, neglect or failure; and the Burlington expressly releases the Union Company from any and all claims or demands on account of any such loss, damage, destruction, injury, or death suffered or incurred by the Burlington arising from such defect, neglect or failure.

Neither party hereto shall under any circumstances arising out of the operation of this agreement have or make any claim against the other party for loss and damage of any kind caused by or resulting from interruption or delay of its business.

(b) The movement of engines, cars and trains of the Burlington on said joint tracks shall be in accordance with the same rules and regulations as are now or may be hereafter established by the Union Company for movement of its engines, cars and trains. The Burlington's trainmen and engineers proposing to run engines or trains on said joint track shall from time to time be required to be examined on rules of the Union Company, and the Burlington shall not permit its trainmen or engineers to so work upon said joint tracks until such employees have been examined on the Union Company's rules and received from it a certificate evidencing its satisfaction with the results of such examination. In order to facilitate this requirement, the Union Company will qualify

one or more of the Burlington's supervisory officers on said rules and regulations and such supervisory officer or officers so qualified shall examine all employees of the Burlington engaged in or connected with the operation of trains over the joint tracks.

(c) Should any engine or car of the Burlington be derailed or damaged while being operated on said joint tracks, the same shall be picked up and removed by the Union Company, and the cost and expense thereof shall be borne and assumed by the Burlington.

4. TERMINAL AND RENTAL CHARGE FOR TRACKAGE RIGHTS:

(a) The TP&W Railroad Company, in order to maintain interchange deliveries directly from the Burlington to the TP&W Railroad Company, hereby agrees to assume the trackage rights expense of the Burlington accruing to the Union Company for such interchange deliveries.

(b) The TP&W Railroad Company shall pay monthly to the Union Company its proportion of the expenses incurred or paid during the preceding month by the Union Company for the cost of operation and maintenance (including taxes and insurance) of tracks, roadbed, embankment, bridges, signals, interlockers, and all other facilities (although not herein named) necessary for the joint operation of the joint tracks between points B and C in District 10. Such costs shall be apportioned monthly on the proportion which the number of units or cars (loads and empties) moved by the Burlington over said joint tracks bears to the whole number of units or cars (loads and empties) moved

over said joint tracks in District 10. It is understood that cars switched by the Union Company shall not be included.

(c) In addition to the so-called wheelage charges to be paid as provided in paragraph 4(b) of this section, the TP&W Railroad Company will pay to the Union Company a charge of fifty cents (50¢) per freight car (load or empty), caboose, and locomotive on all interchange movements directly to the TP&W Railroad Company from the Burlington. It is understood that such cars moving through District 10 will be charged against TP&W Railroad Company.

(d) It is further understood and agreed that such charges provided to be paid by the TP&W Railroad Company shall be subject to any change that may be made hereafter by the Directors of the Union Company as to the method of determining the just proportion to be charged to each tenant and lessee company, but no change shall be made that does not uniformly apply for all tenant and lessee companies participating in such joint expense.

(e) It is understood and agreed that the amounts hereinbefore provided within this section to be paid by the TP&W Railroad Company to the Union Company do not in any case include any cost or expense which the Union Company may incur on account of loss of or damage to property or injury to or death of persons, arising out of or in connection with the operation of any engines, trains, cars or equipment of the Burlington upon said joint track.

5. PAYMENT BY THE TP&W RAILROAD COMPANY:

(a) The TP&W Railroad Company shall make payment to the Union Company within fifteen (15) days after presentation of bills or statements due under the terms set forth in Section 4(b) and (c), hereof.

(b) The Burlington will be required to furnish a monthly statement to the Union Company showing the total freight cars (loads and empties), cabooses, and locomotives moved over said joint track.

(c) All records of the Burlington pertaining to the movement of its engines, cars, and trains over and upon any part of said joint tracks shall be open and available to the inspection of any duly authorized representatives of the Union Company at any and all times during business hours for the purpose of checking and verifying statements furnished by the Burlington in accordance with the provisions hereof.

(d) The Burlington will also be required to have its crews furnish such additional train movement information for each individual train as directed by operating authorities of the Union Company.

6. OWNERSHIP:

Ownership of said joint tracks and facilities shall remain in the Union Company.

7. FIXING OF LIABILITY:

(a) Burlington Northern assumes all risk and liability for damage to its property, trains and employees or to persons, passengers or property on its trains or being carried or handled by it, arising from its use of the tracks and property covered by this contract or from defects in the fences, tracks, roadbed, bridges, buildings or other property of the Union Company except as to defects which the Burlington Northern may have given Union Company notice of and requested the same repaired in writing; and Burlington Northern also assumes the risk and liability for all claims of every character for damage or injury done or caused by its engines, cars or employees, while on the tracks of Union Company, including stock and fire claims and claims for injuries to persons or property, without regard to any concurring negligence of Union Company, except as herein or in this contract otherwise expressly provided; and Burlington Northern will forever save, indemnify and keep harmless the Union Company from all suits, actions, costs and damages arising from or by reason of any of the risks, claims or damages above assumed or by reason of any act, negligence or failure in duty of the Burlington Northern or of any of its officers, agents or employees, and will at its own proper expense defend all actions and suits, whether at law or in equity, which may be brought against Union Company for or on account of the acts, negligence or failure of duty of the Burlington Northern or of any of its officers, agents or employees, or which may be founded upon any of the risks, claims or demands above in this paragraph assumed by Burlington Northern, and will well and truly pay or cause to be paid any such sum as shall be recovered therein against the Union Company. The Union Company will forever save, indemnify and keep harmless Burlington Northern from all suits, actions, costs, or damages arising

from, or by reason of, the acts or negligence of Union Company or any of its officers, agents or employees and not above assumed by Burlington Northern nor founded on a claim or injury against which Burlington Northern has herein agreed to protect and indemnify Union Company. But it is expressly understood and agreed that Burlington Northern shall not be required to pay the Union Company for any damage done to it or its property, or for injury to its employees or persons on its trains by the trains of Burlington Northern, when such damage has been caused by the negligence of Union Company, and that as to such damage or injury so caused the Union Company will protect and save harmless the Burlington Northern from all claim, loss or damage on account thereof, provided, however, that negligence of Union Company shall not be claimed or considered as such by Burlington Northern if due to any condition of or defect in the tracks of Union Company or the maintenance thereof, it being the intention of this proviso that Burlington Northern accepts during the entire term of this agreement such tracks and their maintenance at all times in their then condition.

(k) For the purpose of this agreement the term "employees", as used in this section, includes the following employees of Union Company:

Operators	-	Washington Street, East Peoria
Switchtender	-	South end of East Peoria yard
Dispatchers	-	Bridge Tower, Peoria

but who, for the purpose of this agreement only, are considered Joint Employees. All such Joint Employees, while engaged exclusively in performing any work or services for only one party hereto, shall be deemed the sole employee or sole employees of such party while thus exclusively engaged.

8. RIGHT OF TERMINATION BY DEFAULT:

The rights herein granted to the TP&W Railroad Company and the Burlington are expressly conditioned upon performance by the TP&W Railroad Company and the Burlington of all and singular the covenants and agreements herein set forth to be performed by the TP&W Railroad Company and the Burlington. In the event the TP&W Railroad Company or the Burlington shall default in the performance of any of its obligations hereunder and such default shall continue for a period of sixty (60) days after the receipt of notice thereof from the Union Company, the Union Company shall have the right at any time after the expiration of said sixty (60) day period to terminate this contract forthwith.

9. RIGHT OF TERMINATION:

This agreement shall remain in full force and effect unless and until terminated for cause as hereinabove set forth or by mutual consent or upon six (6) months' advance written notice by any party to the others of its intention to terminate this agreement. The Burlington, upon receipt of any such notice of termination or in the event of termination by mutual consent, agrees to file an application with the Interstate Commerce Commission requesting authority to abandon the trackage rights covered by this agreement and shall take all proper steps to expedite such proceedings before said Commission; however, upon any such termination any party hereto may request any necessary authority and file any necessary application to abandon the trackage rights covered by this agreement and the

processing any such request or application. The termination of this agreement shall become effective on the effective date of any necessary order authorizing the abandonment of such trackage rights.

10. RESERVED RIGHT OF ABANDONMENT:

This agreement shall in no way be construed as limiting the rights of the Union Company to discontinue its ownership, maintenance, improvement or operation of said joint tracks, appurtenances thereto or right-of-way therefor, nor in any way limit the Union Company's right to abandon all or any part thereof at any time as it may see fit, provided, however, that in case the Union Company shall desire to abandon all or any part thereof it shall give to the TP&W Railroad Company and the Burlington written notice of its intention to do so.

11. SUBORDINATION TO UNION COMPANY'S FIRST MORTGAGE:

Notwithstanding anything to the contrary herein contained, the parties hereto agree that all provisions of this agreement shall be subordinate and subject to the lien, terms, and provisions of one certain FIRST MORTGAGE dated January 1, 1950, between Union Company and the United States Trust Company of New York, Trustee, as recorded in Book 374, page 17, in the Office of the Recorder of Deeds of Tazewell County, Illinois, on January 23, 1950.

12. This agreement and the rights granted hereunder may not be assigned, conveyed or transferred by the TP&W Railroad Company or

the Burlington without the written consent of the Union Company;
except as thus limited this agreement shall inure to the benefit
of and be binding upon the successors of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have hereunto set
their hands and seals, as of the day and year first above written.

ATTEST:

P. D. Mitchell
Secretary

PEORIA AND PEKIN UNION RAILWAY COMPANY

By P. W. Halloran
President and General Manager.

ATTEST:

[Signature]
Secretary

TOLEDO, PEORIA AND WESTERN RAILROAD COMPANY

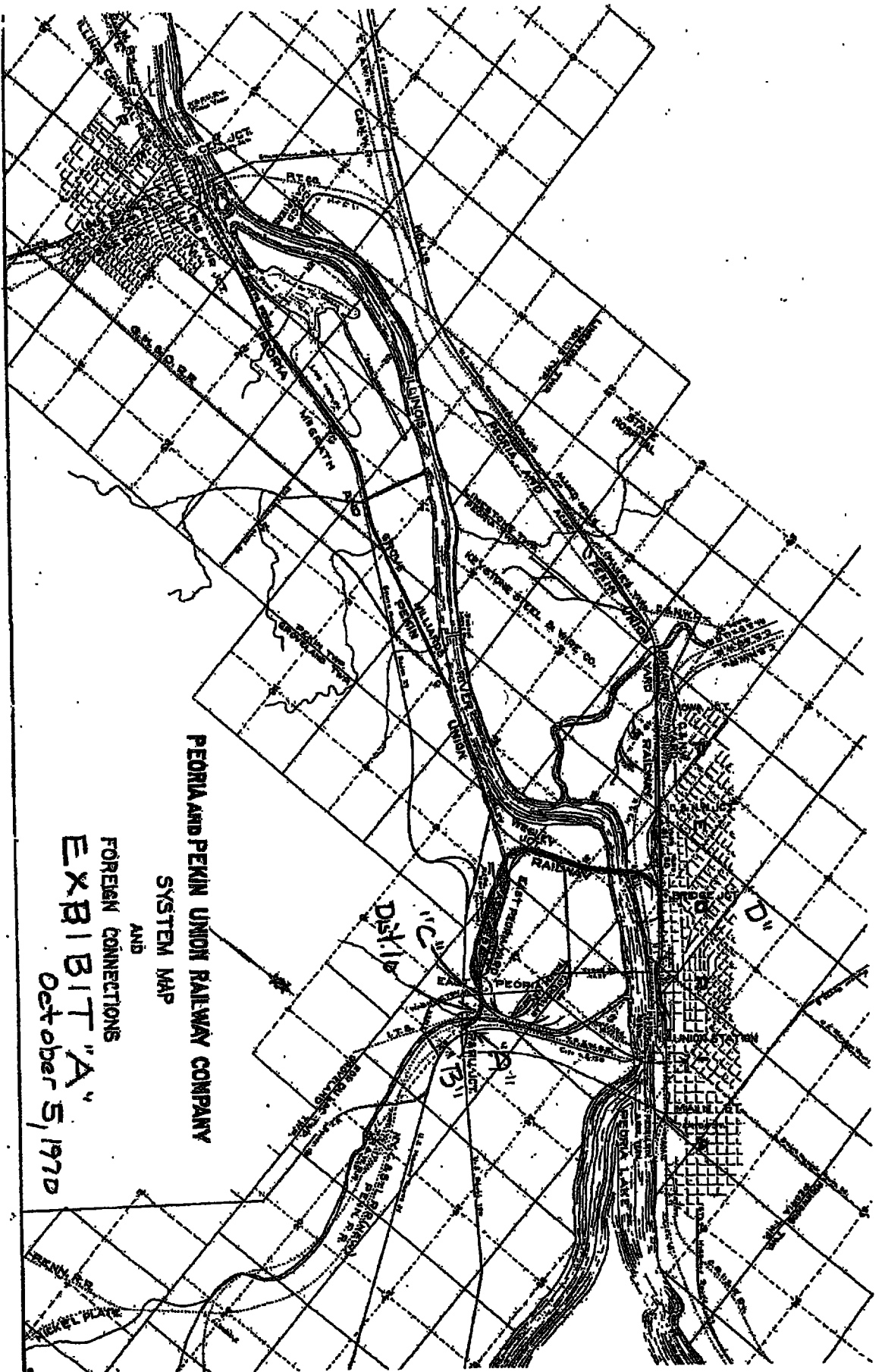
By [Signature]
President

ATTEST:

[Signature]
Secretary

BURLINGTON NORTHERN, INC.

By D. M. Horvath
VICE PRESIDENT



PEORIA AND PEKIN UNION RAILWAY COMPANY

SYSTEM MAP

AND

FOREIGN CONNECTIONS

EXHIBIT "A"

October 5, 1970

Peoria - 7-1

BN 893

AMENDATORY AGREEMENT TO Agreement of April 30, 1971, between the PEORIA AND PEKIN UNION RAILWAY COMPANY, hereinafter referred to as the "UNION COMPANY", the TOLEDO, PEORIA & WESTERN RAILROAD COMPANY, hereinafter referred to as the "TP&W RAILROAD COMPANY", and the BURLINGTON NORTHERN, INC., hereinafter referred to as the "BURLINGTON."

WITNESSETH

WHEREAS, the parties hereto on April 30, 1971, entered into one certain Agreement respecting the handling of road haul trains, interchanging cars from certain road haul carriers and serving various industries in the East Peoria, Illinois, area and

WHEREAS, it is the desire of the parties hereto to amend certain provisions of said Agreement:

NOW THEREFORE, in consideration of the premises and the covenants hereinafter set forth, the parties hereto agree as follows:

1. Paragraph 4(c) of said Agreement dated April 30, 1971, is hereby deleted therefrom and in lieu thereof the parties agree that the obligation of the TP&W RAILROAD COMPANY to pay monthly its proportion of those expenses incurred and paid the preceding month by the UNION COMPANY, as set forth in Paragraph 4(b) of said Agreement as hereby amended, shall include for the purpose of fixing said proportion all cars delivered to the TP&W RAILROAD COMPANY by either the CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY or the BURLINGTON and to be so chargeable in proportion to the movement of such cars in the districts in which such cars move.

2. In all other respects, the terms and provisions of said "BURLINGTON NORTHERN INC. COUNTERPART"

Agreement of April 30, 1971, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, as of the day and year herein set forth.

Dated this 7th day of JUNE, 1974.

PEORIA AND PEKIN UNION RAILWAY COMPANY

BY: [Signature]
President and General Manager

ATTEST:

Secretary - P&PU Ry. Co.

TOLEDO, PEORIA AND WESTERN RAILROAD COMPANY

BY: [Signature]
President

ATTEST:

[Signature]
Secretary - TP&W RR Co.

BURLINGTON NORTHERN, INC.

BY: [Signature]
Vice-President

ATTEST:

[Signature]
ASST. Secretary - Burlington

[Signature]
Associate General Counsel

"BURLINGTON NORTHERN
INC. COUNTERPART"